
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-217
)	
Cablevision Systems of New York City Corporation)	NAL/Acct. No. 200332380008
)	
Bethpage, NY)	FRN: 0004-5055-66

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Cablevision Systems of New York City Corporation ("Cablevision") has apparently violated Sections 11.61(a)(1)(iii) and 11.61(b) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly tests of the Emergency Alert System ("EAS") and failing to maintain station records of required weekly and monthly EAS tests received. We conclude that Cablevision is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On September 17, 2002, a Commission Agent inspected Cablevision located at 1315 Seabury Avenue, Bronx, NY 10461, to verify compliance with the Commission's EAS requirements. The agent's inspection of Cablevision's station records showed that Cablevision:

- (a) Failed to conduct required weekly EAS tests from April 13, 2002 to August 29, 2002.
- (b) Failed to conduct required monthly EAS tests from March 3, 2002 to July 3, 2002.
- (c) Failed to install and maintain the EAS equipment so that it is capable of receiving EAS test messages from April 13, 2002 to July 3, 2002.

3. On October 7, 2002, the New York Office sent a Notice of Violation for failure to conduct and receive required EAS tests to Cablevision, by First Class and Certified Mail Return Receipt Requested.

4. On October 21, 2002, the New York Office received a reply to the Notice of Violation from Paul W. Jamieson, counsel for Cablevision, stating that Cablevision showed compliance with

¹ 47 C.F.R. §§ 11.61(a)(1)(iii) and 11.61(b)

required EAS weekly and monthly testing through April 12, 2002, but because of printer problems, the printer was out of service for repairs.

5. The Commission agent's inspection of Cablevision's station records on September 17, 2002, showed that the EAS printer was sent out for repairs on June 3, 2002. However, the station records from April 13, 2002 to July 3, 2002, failed to show that required monthly EAS tests were conducted, and required weekly and monthly EAS tests were received.

III. DISCUSSION

6. Section 11.61(a)(1)(iii) of the Commission's Rules requires that cable stations conduct monthly EAS tests that conform to procedures in the EAS Operating Hand Book. Section 11.61(b) of the Commission's Rules requires cable stations to maintain station records of weekly and monthly EAS tests received and conducted. The September 17, 2002 inspection of Cablevision's station records failed to show that required EAS monthly tests were conducted from March 3, 2002 to July 3, 2002, and required weekly and monthly EAS tests were received from April 13, 2002 to July 3, 2002.

7. Based on the evidence before us, we find that Cablevision failed to conduct the required monthly EAS tests from March 3, 2002 to July 3, 2002, and failed to maintain station records of required weekly and monthly EAS tests received from April 13, 2002 to July 3, 2002, in willful² and repeated³ violation of Sections 11.61(a)(1)(iii) and 11.61(b) of the Rules.

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁴ sets the base forfeiture amount for failure to make required measurements or conduct required monitoring of EAS tests at \$2,000, and base forfeiture for failure to maintain required records at \$1000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C § 503(b)(2)(D)

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁷ Cablevision Systems of New York City Corporation is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Sections 11.61(a)(1)(iii) and 11.61(b).

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Cablevision Systems of New York City Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380008 and FRN: 0004-5055-66.

12. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380008

13. .

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the

⁶ 47 U.S.C. § 503(b)

⁷ 47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

Federal Communications Commission

NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Cablevision Systems of New York City Corporation, 1111 Stewart Avenue, Bethpage, NY 11714-3581, and a copy to Piper Rudnick LLP, 1200 Nineteenth Street, N.W. Washington, D.C. 20036-2412.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002